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Credit or refund may not be claimed in respect of that portion of the total amount repaid to the distributors (\$3,000) which is allocated to the manufacturer's contribution (\$1,000) since the amount excluded in computing taxable price is equal to the overall 5 percent limitation.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]

**§ 53.102 No exclusion or readjustment for other advertising charges or reimbursements.**

(a) *Exclusions from price.* No exclusion in computing the taxable price of any article sold by the manufacturer may be allowed in respect of any charge for advertising if, and to the extent that, such charge:

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) of the Code and paragraphs (a) and (b) of § 53.100, or

(2) Does not satisfy all of the conditions and limitations stated in section 4216(e)(1) of the Code and paragraph (c) of § 53.100.

(b) *Readjustments of price.* No credit or refund under section 6416(b)(1) of the Code may be allowed in respect of any amount which was included in the taxable price of an article sold by the manufacturer and which was later paid by him to his vendee in reimbursement of costs incurred for advertising, if, and to the extent that, the amount so paid:

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) of the Code and paragraph (b) of § 53.100, or

(2) Is not within the limitation provided in section 4216(e)(2) of the Code, as computed in accordance with § 53.101, as of the close of the calendar quarter in which the amount is so paid over or as of the close of any subsequent calendar quarter in the same calendar year. See, however, § 53.175, relating to redetermination of price readjustments in cases where local advertising charges excluded from taxable price in one calendar year become tax-

able as of May 1 of the following calendar year.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991]

**§ 53.103 Lease considered as sale.**

For purposes of chapter 32 of the Code, the lease of an article by a manufacturer, producer, or importer shall be considered a sale of the article. The term *lease* means a contract or agreement, written or verbal, which gives the lessee an exclusive, continuous right to the possession or use of a particular article for a period of time. The term includes any renewal or extension of a lease or any subsequent lease of the article.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-312, 56 FR 31084, July 9, 1991; T.D. 372, 61 FR 20724, May 8, 1996]

**§ 53.104 Limitation on amount of tax applicable to certain leases.**

(a) *Conditions for eligibility.* Section 4217(b) of the Code provides for a limitation on the amount of tax that shall apply to the lease, any renewal, or further lease, of an article which, if sold, would be subject to tax on the basis of sale price. Such limitation on the amount of the tax applies with respect to the lease of an article only if, at the time of making the lease, the lessor is engaged in the business of selling in arm's length transactions the same type and model of article. In case of a lease to which section 4217(b) of the Code does not apply, tax shall be computed and paid as provided in section 4216(c) of the Code and paragraph (a) of § 53.98.

(b) *Lessor engaged in business of selling.* The lessor will be regarded as being engaged in the business of selling in arm's length transactions the same type and model of an article as the one being leased if it periodically and recurringly makes bona fide offers for sale of such articles in the regular course of operation of its business, which offers if accepted would constitute sales at arm's length. Whether the offers are bona fide shall be determined on the basis of the facts in each case, such as sales actually made, the